United States Government National Labor Relations Board OFFICE OF THE GENERAL COUNSEL

Advice Memorandum

DATE: October 28, 2008

TO : Dorothy L. Moore-Duncan, Regionl Director

Region 4

FROM : Barry J. Kearney, Associate General Counsel

Division of Advice

SUBJECT: Building and Construction Trades Council

of Philadelphia & Vicinity and Skanska

USA Building, Inc. and Almac Group

Case 4-CE-138

This case was submitted for advice as to whether the parties entered into an agreement in violation of Section 8(e). We conclude that the parties never entered into an agreement, and that the charge should therefore be dismissed, absent withdrawal.

FACTS

Almac, a pharmaceutical company headquartered in Northern Ireland, contracted with Skanska, a construction management company, to build its North American headquarters in Pennsylvania. Skanska employs no employees engaged in on-site construction work. In late March, 2008, Skanska distributed bid packages to eight potential subcontractors, including both union and non-union companies.

On April 2, there was a meeting between the Building and Construction Trades Council (the Union), Skanska, and Almac, during which the Union urged that the job be performed with an all-union workforce and asserted the benefits of such an arrangement. Almac/Skanska representatives stressed that the project would have to be on time and within budget, and that even if bidding were limited initially to union contractors, it would have to be opened to non-union contractors if the initial bids came in too high. The Union thereafter attempted to assure Almac and Skanska that union contractors could finish the job on time and under budget. The meeting ended without any commitment by Almac/Skanska as to how the job would be bid. Those in attendance at the meeting have testified consistently as to the substance of the discussion and to

¹ All dates hereafter are in 2008.

the fact that the meeting ended without any agreement as to whether the bidding would be limited to union contractors.

Subsequently, Skansa officials decided to limit the initial bidding to union contractors, assertedly in order to prevent friction that might occur with a mixed crew and because they were concerned that there would be logistical problems in establishing reserved gates at the site.² The Skanska official who relayed this decision to the Union reiterated that, if the initial bids came in too high, Skanska would then invite non-union contractors to bid.

[FOIA Exemptions 2 and 5.

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ACTION

We conclude that the parties never entered an agreement that Almac/Skanska would subcontract work only to union contractors, and therefore, the charge should be dismissed absent withdrawal.

Section 8(e) makes unlawful certain agreements between an employer and a labor organization whereby the employer agrees to cease doing business with non-union subcontractors. It does not outlaw employer unilateral decisions to subcontract work to unionized contractors.³

² There is no evidence that the Union ever threatened to picket if the job was not done solely with union labor.

³ See Teamsters Local 282 (The General Contractors Assn of New York, 262 NLRB 528, 548 (1982) ("the words 'contract or agreement' used in Section 8(e) contemplate the entering into of an agreement between a union and an employer, on a continuing basis, whereby the employer agrees to cease doing busienss with others persons with whom the Union may have future disputes."); Teamsters Local 20 v. Morton, 377 U.S. 252, 260, n. 14 (1964) (Supreme Court noting with approval that there was no claim that voluntary compliance

Here, there is no evidence that the parties entered into an agreement to subcontract only with unionized contractors. Rather, the evidence demonstrates that no agreement was reached at the April 2 meeting and that Skanska decided, after the meeting, to initially accept bids only from union contractors and then to further open the bidding, if necessary, to others. There is also uncontradicted evidence that Skanska made this decision because of its concerns about friction on the jobsite from mixed crews and the difficulty of establishing viable reserved gates. [FOIA Exemptions 2 and 5

] none of the [FOIA Exemptions 2 and 5] is factually inconsistent with the evidence that this was a unilateral decision by Skanska to initially limit the bidding. And, [FOIA Exemptions 2 and 5] is belied by [FOIA Exemptions 2 and 5] the absence of any evidence of pressure by the Union to set up the meeting or to make the decision that Skanska ultimately made.

Accordingly, the Region should dismiss the charge, absent withdrawal.

B.J.K.

with a union request to cease doing business, unsupported by any consideration, amounted to an agreement, express or implied, under Section 8(e) of the Act).